

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 960**

**Introduced by Assembly Member La Suer**

February 20, 2003

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An act to add Article 8.8 (commencing with Section 1039) to Chapter 4 of Division 8 of the Evidence Code, *and to amend Section 3304 of the Government Code*, relating to privilege.

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as amended, La Suer. Public safety officer-peer ~~support counselor~~ supporter privilege.

Existing law creates an evidentiary privilege with respect to specified communications made during certain confidential relationships, including the lawyer-client privilege, the physician-patient privilege, the psychotherapist-patient privilege, the clergyman-penitent privilege, the sexual assault victim-counselor privilege, and the domestic violence victim-counselor privilege.

This bill would establish the public safety officer-peer-~~support~~ supporter privilege ~~regarding that would apply, if the public agency maintains a peer support program, to~~ information transmitted between a public safety officer, as defined, and his or her peer ~~support counselor~~ supporter in the course of that relationship and in confidence by means that, so far as the public safety officer is aware, discloses the information to no 3rd persons other than those who are present to further the interest of the public safety officer in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the peer

~~support counselor~~ *supporter* is consulted, and the advice given by the peer ~~support counselor~~ *supporter* in the course of that relationship. The bill would also set forth various definitions and exceptions from the privilege.

*Under existing law, a public safety officer may not be subject to punitive action or denial of promotion on grounds other than merit based on any allegation of misconduct if the investigation thereof is not completed within one year after discovery of the alleged misconduct by a person who is authorized to initiate the investigation, except as specified.*

*This bill would require that the investigation be completed within one year after discovery of the alleged misconduct by a person, other than the officer's peer supporter, who is authorized to initiate the investigation.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 8.8 (commencing with Section 1039) is  
2 added to Chapter 4 of Division 8 of the Evidence Code, to read:

3  
4 Article 8.8. Public Safety Officer-Peer ~~Support Counselor~~  
5 *Supporter* Privilege  
6

7 1039. For the purpose of this article:

8 (a) “Peer ~~support counselor~~” *supporter*” means a public  
9 safety officer designated by a public safety agency to act as a peer  
10 ~~support counselor~~ *supporter* who has successfully completed a  
11 POST-certified peer ~~counseling~~ *support* course.

12 (b) “Public safety officer” means a corrections officer or a  
13 member of his or her staff, a youth correctional officer, a public  
14 safety dispatcher, a parole or probation officer, a peace officer, a  
15 certified reserve officer, a telecommunications or fire service  
16 employee of a public safety agency who attends a program  
17 established by the public safety agency to obtain counseling or  
18 support services for treatment of issues such as depression, stress,  
19 alcohol or drug abuse, marriage counseling or family counseling.

20 (c) “Public safety agency” means any public agency that  
21 employs public safety officers.

(d) “Confidential communication between a peer support counselor supporter and a public safety officer” means information transmitted between a public safety officer and his or her peer support counselor supporter in the course of that relationship and in confidence by means that, so far as the public safety officer is aware, discloses the information to no third person other than those who are present to further the interest of the public safety officer in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the peer support counselor supporter is consulted, and the advice given by the peer support counselor supporter in the course of that relationship.

1039.2. Subject to Section 912 and except as otherwise provided in this article, a public safety officer, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the public safety officer and his or her peer support counselor supporter if the privilege is claimed by ~~one~~ either of the following:

(a) The holder of the privilege.

~~(b) A person who is authorized to claim the privilege by the holder of the privilege.~~

~~(c)~~

(b) The person who was the peer support counselor supporter at the time of the confidential communication. ~~However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.~~

1039.3. A peer support counselor supporter who received or made a communication subject to the privilege under this article shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1014.

1039.4. Any notes, records, or reports arising out of a consultation between a public safety officer and a peer support counselor supporter is not subject to the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

1039.5. There is no privilege under this article if the services of the peer support counselor supporter were sought or obtained to enable or aid anyone to commit or plan to commit a crime or tort,

1 or to escape detection or apprehension after the commission of a  
2 crime or tort.

3 1039.6. There is no privilege under this article ~~as to a~~  
4 ~~communication relevant to an issue of breach, by a peer support~~  
5 ~~counselor or by a public safety officer, of a duty arising out of the~~  
6 ~~public safety officer-peer support counselor relationship. if there~~  
7 *is a serious violation of agency policy. Each agency maintaining*  
8 *a peer support program shall, in their policy manual, enumerate*  
9 *those violations of agency policies that are considered to be*  
10 *serious.*

11 1039.7. There is no privilege under this article if a peer  
12 ~~support counselor supporter~~ has reasonable cause to believe that  
13 a public safety officer is in such mental or emotional condition as  
14 to be dangerous to himself or herself or to the person or property  
15 of another, and that disclosure of the communication is necessary  
16 to prevent the threatened danger.

17 1039.8. There is no privilege under this article if a peer  
18 ~~support counselor supporter~~ obtains information from a public  
19 safety officer relating to any admission of criminal conduct.

20 1039.9. There is no privilege under this article as to  
21 information that a peer ~~support counselor supporter~~ or a public  
22 safety officer is required to report to a public employee or as to  
23 information required to be recorded in a public office, if the report  
24 or record is open to public inspection.

25 1039.10. Nothing in this article is intended to limit the  
26 discovery or introduction into evidence of knowledge or  
27 information acquired by a public safety officer, other than  
28 information obtained during a counseling session by a peer ~~support~~  
29 ~~counselor supporter~~, that was obtained during the course of his or  
30 her employment and otherwise subject to discovery or  
31 introduction in evidence in a criminal or civil proceeding.

32 1039.11. *This article does not apply to a public safety agency*  
33 *that does not maintain a peer support program.*

34 SEC. 2. *Section 3304 of the Government Code is amended to*  
35 *read:*

36 3304. (a) No public safety officer shall be subjected to  
37 punitive action, or denied promotion, or be threatened with ~~any~~  
38 ~~such~~ *that* treatment, because of the lawful exercise of the rights  
39 granted under this chapter, or the exercise of any rights under any  
40 existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with ~~such an~~ *that* order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute “reason or reasons.”

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year ~~of~~ *after* the public agency’s discovery by a person, *other than a peer supporter as defined in Section 1039 of the Evidence Code, who is* authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. ~~In the event that~~ *If* the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(6) If the investigation involves a matter in civil litigation ~~where~~ *in which* the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(7) If the investigation involves a matter in criminal litigation ~~where~~ *in which* the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure ~~shall~~ *is not* be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

1 (A) The evidence could not reasonably have been discovered  
2 in the normal course of investigation without resorting to  
3 extraordinary measures by the agency.

4 (B) The evidence resulted from the public safety officer's  
5 predisciplinary response or procedure.

6 (h) For those members listed in subdivision (a) of Section  
7 830.2 of the Penal Code, the 30-day time period provided for in  
8 subdivision (e) ~~shall~~ *may* not commence with the service of a  
9 preliminary notice of adverse action, ~~should~~ *if* the public agency  
10 ~~elect~~ *elects* to provide the public safety officer with ~~such a~~ *that*  
11 notice.

